

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO 16-MD-2738 (FLW) (LHG)

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IN RE JOHNSON & JOHNSON : TRANSCRIPT OF  
POWDER PRODUCTS MARKETING, : STATUS HEARING  
SALES PRACTICES. :  
----- : JUNE 21, 2017

CLARKSON S. FISHER UNITED STATES COURTHOUSE  
402 EAST STATE STREET, TRENTON, NJ 08608

B E F O R E: THE HONORABLE FREDA L. WOLFSON, USDJ  
THE HONORABLE LOIS H. GOODMAN, USMJ

A P P E A R A N C E S:

BEASLEY ALLEN, ESQUIRES

BY: P. LEIGH O'DELL, ESQUIRE (ALABAMA)

-and-

ASHCRAFT & GEREL, ESQUIRES

BY: MICHELLE A. PARFITT, ESQUIRE (VIRGINIA)

CHRIS TISI, ESQUIRE (VIRGINIA)

-and-

COHEN, PLACITELLA & ROTH, ESQUIRES

BY: CHRISTOPHER M. PLACITELLA, ESQUIRE (NEW JERSEY)

On Behalf of the Plaintiffs Steering Committee

BLOOD, HURST & O'REARDON, ESQUIRES

BY: TIMOTHY G. BLOOD, ESQUIRE (CALIFORNIA)

Interim Class Counsel

(Continued.)

\* \* \* \* \*

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JULIE L. TERSIGNI, ESQUIRE (NEW JERSEY)

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SHOOK, HARDY & BACON, ESQUIRES

BY: KATHLEEN FRAZIER, ESQUIRE (TEXAS)

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On Behalf of Defendant Johnson & Johnson

SEYFARTH & SHAW, ESQUIRES

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BY: SHERYL L. AXELROD, ESQUIRE (PENNSYLVANIA)

On Behalf of Defendant PCPC

COUGHLIN DUFFY, ESQUIRES

BY: LORNA A. DOTRO, ESQUIRE (NEW JERSEY)

-and-

GORDON & REES, ESQUIRES

BY: ANN THORNTON FIELD, ESQUIRE (PENNSYLVANIA)

On behalf of Defendant Imerys Talc America

**C E R T I F I C A T E**

PURSUANT TO TITLE 28, U.S.C., SECTION 753, THE  
FOLLOWING TRANSCRIPT IS CERTIFIED TO BE AN ACCURATE  
TRANSCRIPTION OF MY STENOGRAPHIC NOTES IN THE  
ABOVE-ENTITLED MATTER.

S/Vincent Russoniello  
VINCENT RUSSONIELLO, CCR  
OFFICIAL U.S. COURT REPORTER

**M O R N I N G   S E S S I O N**

(In open court.)

THE CLERK: All rise.

JUDGE WOLFSON: Thank you.

(Appearances given.)

\* \* \* \* \*

JUDGE WOLFSON: On the record.

JUDGE GOODMAN: We're starting with the June 19, 2017, letter that you folks sent in with regard to the pathology protocol.

A lot of it has to do with timing of the notice and I think we can deal with that without oral argument. I don't need to hear anything on that. I think that is just a practical issue and we'll deal with it.

What I need to hear more on is the preservation of the materials because honestly I don't know what's involved. And to the extent the issue is who has the burden of preserving the materials, whether it's plaintiff or a facility that I have no control over and cannot order to do anything, I don't understand where we're going with this.

I need to know: How is this typically dealt with in a case of this kind? Who typically takes

1 control over the pathology specimens, whose burden it  
2 is? What burden is it? Is it expensive? Why isn't  
3 it something that the experts are dealing with?

4 So I would like to hear something on this.  
5 Frankly, the letter raises more questions than it's  
6 answering for me.

7 MS. PARFITT: Your Honor, if I may, I'll  
8 start. Please interrupt me at any point in time to  
9 ask any questions, and counsel as well.

10 Thank you first with regard to the deadlines.  
11 I agree with the Court. That should be something we  
12 should be able to reconcile.

13 With regard typically -- and I guess there is  
14 never any typical situation in life anymore -- but  
15 typically when we had slides, the plaintiffs have made  
16 the request because it's our expert first that would  
17 like to look at the slides and do whatever it is that  
18 they need to do. So what has been our experience, we  
19 will request the slides that can be generated from the  
20 medical facility, the path lab.

21 Now, Your Honors are aware of the fact that we  
22 have a preservation order that has been entered which  
23 also covers pathology. To the extent that the  
24 pathology sections and departments of the various  
25 hospitals and medical centers have been notified that

1 they may be in possession of tissue, that we would  
2 like them to hold on to because sometimes there are  
3 times when a facility might only have to keep tissue  
4 blocks, et cetera, for a period of 7 years, whatever  
5 the period may be.

6 So those facilities have now been notified by  
7 plaintiffs that they are to preserve and hold on to  
8 the material that we may need to request.

9 JUDGE GOODMAN: Right. We dealt with that at  
10 the last conference, the time needed, and that's been  
11 taken care of.

12 MS. PARFITT: Correct. So we started that  
13 process.

14 Now, what we're talking about is actually  
15 getting down to the actual work and requests, the  
16 specific slides that may be relevant to our  
17 plaintiffs.

18 So typically what we do is we send requests  
19 again to the hospital, medical facility, asking that  
20 they provide us with blocks, ideally, if they only  
21 have blocks, or tissue, whatever the pathology  
22 materials that we would need.

23 We usually have a pathology report from the  
24 physician that has identified the relevant pathology.  
25 So what we do is we send the pathology report along

1 with the request for certain pathology materials.

2 Then we get them. And there is a chain of  
3 custody process and we have prepared a chain of  
4 custody letter that more often than not we will ask  
5 that the facility -- and it's done differently. I  
6 can't speak to all law firms.

7 Some may have the facility sent it to their  
8 law firm and the law firm then sends it out to the  
9 expert. Some may make arrangements to have the  
10 facility send it directly to the expert.

11 We have had occasions where we have requested  
12 blocks and the facility has refused to give us blocks.  
13 They will only give us slides. And then we have to  
14 get the expert involved in actually trying to get what  
15 he or she needs.

16 So, again, typically, what you are seeing is  
17 the plaintiffs are initiating the process. Then what  
18 this preservation order has to address is the fact  
19 that the defendants are also entitled to look at those  
20 pathology materials that our experts have looked at.

21 So what we're trying to do is set up a process  
22 that allows both sides access to relevant materials  
23 and evidence. So what that involves is what's frankly  
24 laid out here. Where there is a dispute, if there is  
25 a dispute, is within this particular protocol the

1 defendants, and I believe it's the section that deals  
2 with -- it's Section 5, Paragraph 9, that talks about  
3 dealing with half of the preserved material. So we  
4 say to the facility save half for our friends over  
5 here who may also wish to have their experts look at  
6 the tissue and the material.

7           The problem is the defendants want us to say:  
8 We agree to preserve and maintain at least one-half of  
9 any preserved material. Ideally, that is exactly what  
10 we would like them to do. The problem is that we too  
11 make requests to the facility. I don't own, control,  
12 any of the facilities that are receiving my requests,  
13 nor do any other plaintiff.

14           So one would hope that a medical facility who  
15 now has probably two requests: One, preservation  
16 letter, hold on to everything; two, a request  
17 specifically for pathology materials. Half be sent,  
18 be saved, so that they can also be used by the  
19 defendants.

20           Frankly, in the course of this protocol that  
21 your Honor has, it's probably the only one that makes  
22 it difficult for us to agree to. It's very difficult  
23 to represent before your Honors we will do this. I  
24 don't have that kind of power or control. What I do  
25 have is the ability to not only on behalf of my firm



1 but that all firms understand what their requisite  
2 obligations are with regard to the evidence here.

3 That's what we are trying to do is set forth a  
4 protocol that permits our experts to adequately review  
5 the evidence and frankly for the defendants to have an  
6 opportunity to look at that evidence as well.

7 JUDGE GOODMAN: So have there been any  
8 pushback, any objection from any of the facilities  
9 that you sent preservation notices to?

10 MS. PARFITT: Again, I can only speak from my  
11 own firm's experience. No, the pushback would be  
12 blocks. There has been pushback with regard to  
13 providing blocks. At times we have been successful in  
14 getting those blocks because we had our medical people  
15 speak with their medical people and it seems that  
16 dialogue has been a useful one. Sometimes that's  
17 happening. We certainly entertained that opportunity.

18 I can't speak for anyone else. I believe most  
19 medical facilities are very good about honoring these  
20 kinds of requests. One thing we have done is we just  
21 don't send it to a medical facility, generally, to  
22 their risk assessment or their health office. We will  
23 send a separate letter out to pathology.

24 What we have learned in the past is they don't  
25 all speak to each other. So we send separate requests

1 to the facility. So any facility could have three  
2 letters from us and that's an assurance that the word  
3 is getting to them.

4 JUDGE GOODMAN: But the way this works, as I'm  
5 understanding it, is that the facility has a tissue  
6 specimen and they have been asked to maintain that.

7 Now, they are being asked to send one-half of  
8 that be it by slide or block --

9 MS. PARFITT: Pathology materials, yes.

10 JUDGE GOODMAN: One-half to plaintiffs'  
11 expert. And the question is whether the other half is  
12 sent to defendants' expert or maintained by the  
13 facility? Is that the question? What is it  
14 defendants want to have happen here?

15 MS. FRAZIER: What we would like to happen is  
16 rather than put it in the facility's domain or make it  
17 their burden to divide and make sure that they divide  
18 equally the pathology and give it to each side and  
19 photograph it and such, that burden then would shift  
20 to the plaintiffs because the facilities themselves  
21 are not in the business of litigation. They really  
22 don't have anyone taking care of patients. They are  
23 trying to make sure that they are identifying diseases  
24 and things like that.

25 So I think to add to their burden to not only

1 preserve this tissue but to photograph it and to make  
2 sure that they divide it equally and hold onto the  
3 other half for us -- because remember the plaintiffs  
4 are ordering these pathology specimens before usually  
5 we are even aware of their existence. So we would  
6 then order them at some later period of time.

7 Now, if the plaintiffs obtain the specimen and  
8 they are the ones who photograph and divide it, then  
9 at least we know that the plaintiffs are -- it's their  
10 burden to do it. It's in their control.

11 As Ms. Parfitt has said, she doesn't control  
12 the facility. So she can't control whether or not  
13 they are going to hold on to the other half of the  
14 specimen, whether or not they have actually divided it  
15 equally or photographed it.

16 JUDGE GOODMAN: But the Court doesn't control  
17 the facility either and can't order the facility to do  
18 this. Is this a burdensome thing? If half of it is  
19 going to plaintiffs' expert, why isn't the other half  
20 going to defendants' expert at the same time?

21 Or, if the burden is in the dividing and  
22 photographing, why not have it go to an independent  
23 lab and let the independent lab send half to each of  
24 you so that the chain of custody is preserved?

25 I'm hearing that you want plaintiffs' expert

1 to do it. But are we going to have problems down the  
2 road that they didn't do it right and issues there?  
3 I'm just trying to understand what the logistics are  
4 here.

5 MS. PARFITT: Your Honor, if I may, let me  
6 speak to the mesh litigation. In that litigation, you  
7 also had requests for thousands and thousands of  
8 pathology specimens.

9 What we have done and what again a lot of  
10 plaintiffs' lawyers have done and I suspect defendants  
11 do it as well, when tissue is requested, we want to do  
12 that early on. That's why you have this order in  
13 front of you. We want to get that material ordered  
14 and somewhere outside of the lab of the medical  
15 facility because there are compliance issues that  
16 medical facilities have to comply with and they are  
17 not always as long as we wish they were.

18 So what we have done is contract, some  
19 plaintiffs' lawyers contract as well with the facility  
20 that houses this tissue, so that not every piece of  
21 pathology specimen is being looked at in the moment.  
22 It's requested and then it's sent immediately to,  
23 let's call it, a facility that actually houses,  
24 provides a home for them, the materials. They know  
25 not to get rid of the materials for decades. So

1     that's something that's in play as well.

2             To answer your question directly, it hasn't  
3     been problematic. I have had many, many, many, many,  
4     many mesh specimens and this is the process that we  
5     have followed. We have ensured that the preservation  
6     letters are sent to the medical facilities. They have  
7     legal departments. I don't think they are blatantly  
8     ignorant of the requests. We tell them what we need.

9             We do that in this case on two occasions. Not  
10    only have we sent preservation letters out, but we  
11    have sent a specific letter to the facility that your  
12    Honor has in front of her, and even a third occasion  
13    where sometimes we send our own letter directly to  
14    pathology. So there are three occasions for the  
15    pathology department to hold on to the tissue.

16            JUDGE WOLFSON: Can I ask a question even  
17    though it's Judge Goodman's issue?

18            MS. PARFITT: Sure.

19            JUDGE WOLFSON: What you have identified that  
20    you have done in the past is have this separate  
21    facility that it gets sent to to preserve it so the  
22    hospital is off the hook. And, by the way, does that  
23    facility then do anything further before it provides  
24    it to your expert?

25            MS. PARFITT: No. They just simply house it.

1 JUDGE WOLFSON: Simply house it. Okay.

2 So they are not dividing because supposedly  
3 they've gotten only your half of what you need?

4 MS. PARFITT: Not at all.

5 JUDGE WOLFSON: Well, if you agree to  
6 whichever facility is going to be to house it, you can  
7 both agree to that. It can be maintained there. And  
8 we're still dealing with how does each one get their  
9 half. But if the entire specimen is sent to that  
10 facility, then you can each get the half when you want  
11 it. Because now you control that facility. It's no  
12 longer the issue of how we're going to get it.

13 Now, I understand who is going to have it, or  
14 cut it, and do it, that could be worked out. But in  
15 the sense of preservation at this point and who has  
16 the responsibility, if you get it out of the hospital  
17 setting and agree on a facility that's going to hold  
18 it, doesn't that start with at least we've got  
19 preservation?

20 MS. PARFITT: Well, let me put another little  
21 kink in that armor a little bit.

22 JUDGE WOLFSON: Okay.

23 MS. PARFITT: While we had something in this  
24 order for the other half to be saved to potentially go  
25 to the defendants, there are occasions that only the

1 half of the pathology specimens that are cut are ever  
2 utilized by either side.

3 I've had many situations in other cases where  
4 the half that was kept and sent to say our experts,  
5 those materials were then subsequently sent, whatever  
6 our expert has was sent to their expert.

7 JUDGE WOLFSON: It almost sounds like they  
8 want that. In fact, I read that as part of one of the  
9 positions that, when you are done, whatever you gave  
10 to your expert please give to us. That's another way  
11 of doing it as well.

12 All I'm suggesting is maybe it's that we don't  
13 even request a half. Request it all to be sent to the  
14 facility.

15 MS. PARFITT: I don't think they will turn it  
16 all over.

17 THE COURT: They won't. Okay.

18 MS. PARFITT: That will be the other issue  
19 you're going to have because the hospital is not going  
20 to turn it all over. That hasn't been my experience.

21 JUDGE WOLFSON: Well, isn't it essentially all  
22 turned over if effectively they give you the half and  
23 then they give them the other half?

24 MS. FRAZIER: Or they don't give us any  
25 because they have already given out --

1 JUDGE WOLFSON: Okay. Whatever. But I'm just  
2 saying at some point if we do half, half, it's still  
3 going to be all turned over.

4 MS. PARFITT: I think it's what half is. A  
5 facility may say: You get half of a half that we are  
6 going to give you, plaintiff. So let me make that  
7 clarification.

8 JUDGE WOLFSON: You are saying they may in  
9 fact, what they're giving you, let's say, they have  
10 more than one slide, block, whatever it might be, and  
11 they are giving you some portion of it and they are  
12 still retaining some of it.

13 MS. PARFITT: Correct. And that really has  
14 been our experience. I will tell you that of our  
15 physician. The hospital is somewhat loathed to turn  
16 everything over on an individual patient. They want  
17 something.

18 JUDGE WOLFSON: I understand that. Right.  
19 Because they never know what's going to come down the  
20 line where they are concerned, either.

21 MS. PARFITT: Correct.

22 JUDGE WOLFSON: I understand that.  
23 You could take it over.

24 JUDGE GOODMAN: All right. So we're talking  
25 about some portion of the whole. It doesn't matter



1       whether it's half of a half --

2               MS. PARFITT:   Correct.

3               JUDGE GOODMAN:  -- or the half.

4               I think Judge Wolfson is picking up on the  
5       same thing I'm thinking.  Why not get whatever portion  
6       they are willing to release to a separate location  
7       that you folks agree on, do the division there, and  
8       take it from there and share the cost of the  
9       preservation.  You get your half.  You get your half  
10      of whatever is given over.  Your experts have carte  
11      blanche to do what they want to do.

12              MS. PARFITT:  Your Honor, I guess my response  
13      to that would be, while this may be what my firm has  
14      done, we are using a housing facility.  I can't tell  
15      you that that's what all law firms do nor do they need  
16      to do that.

17              Oftentimes the firm will decide that they will  
18      make the request.  It will go directly to the expert.  
19      There is no need to house it.  And it gets sent back  
20      to the hospital.  Because sometimes the hospital wants  
21      us to return.  That's another issue.  Again, there's a  
22      lot of kinks in this armor.  That's why the protocol  
23      you have in front of you is probably a protocol that  
24      has anticipated all of the problems we've had in the  
25      past with tissue.

1 JUDGE GOODMAN: You are the anticipating  
2 problems that may not happen and I think it's becoming  
3 a mess.

4 MS. PARFITT: Well, no, and it hasn't because  
5 in the past -- and I don't even think we have a mess.  
6 I don't believe there is a lot of disagreement between  
7 the parties as to the protocol before. I think what  
8 this protocol should do is allow the personal  
9 preferences of the firms. And some would simply  
10 request directly to a facility, get it back; and the  
11 facility's preference would be to have it returned  
12 directly to them, not to be sitting around in some  
13 housing facility.

14 Now, if you want to do that, you may be able  
15 to make arrangements as well with the medical  
16 facility. They'll let you send it to a new home for a  
17 period of time. This I believe allows all that to  
18 happen.

19 Candidly and frankly what you have in front of  
20 you is something that has worked in most litigations  
21 involving tissue. The only quarrel we had, and we  
22 almost didn't come before you, was on timing.

23 JUDGE GOODMAN: Aren't you sorry that you did.

24 MS. PARFITT: No, it's always good to talk  
25 about these things. But I think we can simplify it.

1 I don't think there is much disagreement about the  
2 content of what has to happen.

3 Both sides, I believe, and you can speak for  
4 yourself, Ms. Frazier, if you feel different, it's  
5 really just what's practical time limits to accomplish  
6 what was set forth here? I will represent to the  
7 Court that what's set forth here is typically what's  
8 been done in the past.

9 I do not believe that there has been  
10 enumerable motions and problems with the process. It  
11 seems to have worked. The only quarrel we have, if  
12 you want to call it a quarrel, was: Do the plaintiffs  
13 have 14 days to take action or do they have 21 days?  
14 That was really it.

15 The other issue was: Do we add after the  
16 14 days or the 21 days, "as soon as practicable"? Why  
17 was that a vetting point back and forth? It's  
18 because, again, in the MDL we don't control every  
19 single plaintiffs' attorney.

20 We are trying to give them a couple of days  
21 either way so that you don't receive motions from the  
22 defendants that we weren't in compliance. We are  
23 trying to set up a system that works that doesn't  
24 cause unnecessary motion practice.

25 We shouldn't be abusive. And I think that's

1 the message that goes out by the plaintiffs. You  
2 can't abuse the leeway or the margin of error the  
3 Court has given you. The Court is acting practically,  
4 but you can't abuse it.

5 The last difference of opinion is with regard  
6 to the request. Is the request to the facility? It  
7 should be to the facility. Do we have an obligation  
8 to make sure the facility understands what we need?

9 And if we run into a problem, then I think we  
10 should go to the defendants. If we're having a  
11 problem, we could notify them that we are having a  
12 problem. But I can't control medical facilities  
13 around the country.

14 JUDGE WOLFSON: Let me just ask one other  
15 question before Judge Goodman goes on.

16 MS. PARFITT: Sure. Of course.

17 JUDGE WOLFSON: I understand plaintiffs'  
18 position as well as defendants' position. All you  
19 would like to do is, you would like to notify the  
20 facility. You would like to get your half. You would  
21 like to put them on notice: Maintain another half  
22 because the defendant is making a request. And you  
23 say: It's on them because maybe they are not going to  
24 make a request of the hospital itself. Maybe they  
25 want to get it from you, whatever.

1           Could we have it done in such a way -- and I  
2     know your concern is: Well, what if the hospital  
3     doesn't want to give us another half? They really  
4     didn't maintain the other half. They gave them  
5     everything.

6           But if we have kind of a two layer, which is:  
7     They are told to maintain half for you. You can get  
8     of the same sample that they gave. You can get it  
9     directly. If you have an issue, your expert is  
10    obligated to preserve the sample that they get.

11           So if they are unable to get it from the  
12    hospital, or if they have a preference that they would  
13    rather get it from your expert, that that's available  
14    to them.

15           Can we do that so there is two layers so  
16    you've got that built that you know you are going to  
17    get a sample? How about that?

18           MS. FRAZIER: I guess that could work. Again,  
19    the timing.

20           JUDGE WOLFSON: Okay. That works. Let's  
21    finish that.

22           Are you in agreement, too?

23           MS. PARFITT: I think that would work.

24           I didn't mean to bring one other thing up to  
25    the Court. I think we've made some progress on that.

1           Understand, as well, your Honors, that  
2     standing before the Court today there are people who  
3     have already requested their tissue. I think this  
4     addresses that circumstance as well. So I think your  
5     plan may work. I don't think we have a problem.

6           THE COURT: All right.

7           JUDGE GOODMAN: So there is a fail-safe. The  
8     facilities are put on notice. Plaintiff gets their  
9     sample, but plaintiff has to preserve. We're not  
10    talking about destructive testing here, so the  
11    specimens are preserved.

12          MS. PARFITT: Your Honor, this doesn't even  
13    talk about the type of testing because we couldn't get  
14    this far. That is an issue we need to take up not  
15    today. What we need is to make sure moving forward we  
16    have a process because I know you appreciate up until  
17    now there isn't one. So what people are doing is what  
18    they are doing.

19          So we are trying to get a process forward.  
20    That's why I am trying to simplify it. I think what  
21    you have suggested, your Honors, will simplify it.  
22    All we have to do now is days, decide how many days  
23    everyone gets, and I think we have a plan.

24          JUDGE GOODMAN: All right.

25          MS. FRAZIER: I have one final point on that.

1           The plaintiffs' duty to preserve the specimen  
2 just in case we aren't able to, would that duty go to  
3 preserve at least half of what they get, so that we  
4 can get it if we can't get it from the facility?

5           JUDGE WOLFSON: Well, the obligation to  
6 preserve half would come into play if there is  
7 destructive testing.

8           MS. PARFITT: We aren't there yet.

9           JUDGE WOLFSON: So if it doesn't destroy it,  
10 it doesn't matter. But if there is going to be  
11 destructive testing --

12           MS. PARFITT: Then we have to have another  
13 process.

14           JUDGE WOLFSON: That's what it would do.

15           JUDGE GOODMAN: And that's a whole other level  
16 of negotiation once you find out what your experts are  
17 going to do and by then you should know what's  
18 available.

19           MS. PARFITT: Because understand the  
20 overarching concern for us is the overarching concern  
21 for them. We recognize in a case like this tissue is  
22 important. It does not behoove us to do something to  
23 impede that process. So I actually think the parties  
24 are on the same page. It's just the mechanism.

25           JUDGE GOODMAN: All right.

1           Now, with regard to the timing, I have to tell  
2   you, I think you have done a lot of good work here.  
3   You have agreed on most of this. I am not persuaded  
4   that "as soon as practicable" belongs in here. It's  
5   basically eviscerating the agreement in terms of  
6   14 days or 7 days or 21 days.

7           I am willing to say, if it's 14 days that you  
8   agree on, or additional time, if there are extenuating  
9   circumstances, but no longer than 21 days. Because  
10   you folks have a lot of hands working on this. You  
11   could get it done within the timeframe. If something  
12   unthinkable happens, you have a little window but only  
13   if something truly extenuating happens.

14           So if you agree to 14 days, I'm willing to say  
15   or 21 days if there are extenuating circumstances.  
16   But what I don't want to happen is 14 days is then  
17   21 days every time. This has to get done. You've  
18   agreed to it. This is really ministerial.

19           JUDGE WOLFSON: In fact, who is doing this,  
20   plaintiffs' counsel or the facility that's getting it?

21           MS. PARFITT: It will depend on frankly what  
22   step in this process that you are in. That's why we  
23   were asking for the additional time and the little bit  
24   of a margin of error because, again, the facility may  
25   not move as quickly or we can't get the information or



1 we have a plaintiff's lawyer that calls us and says:  
2 What are you doing? I'm in trial for a month. I  
3 can't do this. We're not trying to be abusive.

4 JUDGE WOLFSON: But it's a little form. The  
5 words are: "Notify within 14 business days," or  
6 whatever, "after receipt of the material."

7 When they come in the door any assistant could  
8 be noting they have come in the door and we have this  
9 form that we send out that's a checkoff. We have  
10 received materials today in such and such a case.

11 MS. PARFITT: I don't disagree with the Court  
12 that it's ministerial. I think the problem we have  
13 standing before your Court is that it's not just the  
14 firms --

15 JUDGE WOLFSON: You are talking about some of  
16 the smaller firms. You don't know where they are  
17 around the country that may be getting these and how  
18 you control them.

19 MS. PARFITT: Exactly.

20 JUDGE WOLFSON: Well, you are going to have to  
21 tell them then.

22 MS. PARFITT: We will. We will certainly tell  
23 them.

24 But I think what you've indicated, and I think  
25 this has been certainly your mantra from the

1 beginning, we don't want a motion practice on things  
2 like this for everything. You don't want us showing  
3 up next month with 60 plaintiffs behind us who have  
4 suggested that they weren't able to meet their  
5 obligation.

6 That is really what we are trying to avoid.  
7 We are thinking forward. We are thinking that things  
8 are not perfect all the time and we just want to have  
9 a process in place which has a little flexibility to  
10 it.

11 And I suspect, your Honor, if even in the  
12 21 days and it was that extenuating circumstance, I  
13 would like to be able to stand before your Court and  
14 say: Your Honor, I know what you said. Don't go  
15 beyond that 21 days. These are the circumstances.  
16 This is why it couldn't happen. But they'll have it  
17 to you 27 days, whatever.

18 That's what we are looking for. I don't think  
19 that's an unreasonable thing when you are guiding the  
20 efforts of so many other plaintiffs. I wish I could  
21 say Ms. O'Dell and our PVC have that kind of control.  
22 But I will tell you, all we could do is give you our  
23 best effort.

24 MS. FRAZIER: Your Honor, it seems to me that  
25 an order by the Court would help to enforce that and

1 to get to these other plaintiffs' counsel to move on  
2 these issues.

3 JUDGE GOODMAN: There will be an order. We  
4 will do an order. It's going to be 14 days. If  
5 extenuating circumstances, 21.

6 Your first recourse, it's going to be in an  
7 order and I'm sure that you are all going to tell all  
8 of the plaintiffs' counsel what their obligations are.  
9 If there is for some reason someone who does it in  
10 23 days, your first recourse is to go to Ms. Frazier.  
11 There was a death in the family. There was something  
12 impossible to work around.

13 I don't expect defendants to come running in  
14 to me because someone had a death in the family. But  
15 because someone said: Oh, you know, maybe an order is  
16 only guidelines, not really controlling, that's a  
17 problem and you need to control your plaintiffs'  
18 counsel. You have to make sure that they are doing  
19 what they have to do.

20 So that's my inclination on this: 14 days;  
21 21 for extenuating circumstances.

22 JUDGE WOLFSON: Off the record.

23 ( Discussion off the record.)

24 THE CLERK: All rise.

25 (Proceedings concluded.)

C E R T I F I C A T E

I, **Vincent Russoniello**, Official United States Court Reporter and Certified Court Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I do further certify that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.

S/Vincent Russoniello  
Vincent Russoniello, CCR  
Certificate No. 675

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